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Persons seeking further information concerning abandonment procedures may contact the Surface Transportation Board or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis.

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by the Section of Environmental Analysis will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Any other persons who would like to obtain a copy of the EA (or EIS) may contact the Section of Environmental Analysis. EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

(d) A petitioner for an abandonment exemption must serve a copy of the petition on the persons receiving notices of exemption under §1152.50(d). The petition must include the following statement: "Based on information in our possession, the line (does) (does not) contain federally granted right-of-way. Any documentation in petitioner's possession will be made available promptly to those requesting it."

(e) As Provided in §1152.29(e)(2), rail carriers that receive authority to abandon a line by individual exemption under 49 U.S.C. 10502 must file with the Board a notice that abandonment has been consummated.

[61 FR 67883, Dec. 24, 1996, as amended at 62 FR 34670, June 27, 1997]

PART 1155—SOLID WASTE RAIL TRANSFER FACILITIES

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AUTHORITY: 49 U.S.C. 10908, 49 U.S.C. 10909, 49 U.S.C. 10910.

SOURCE: 74 FR 4720, Jan. 27, 2009, unless otherwise noted.

Subpart A—General

§ 1155.1 Purpose and scope.

49 U.S.C. 10501(c)(2)(B) excludes solid waste rail transfer facilities from the Board's jurisdiction except as provided under 49 U.S.C. 10908 and 10909. Sections 10908 and 10909 provide the Board authority to issue land-use-exemption permits for solid waste rail transfer facilities when certain conditions are met. 49 CFR 1155 contains regulations concerning land-use-exemption permits and the Board's standard for review.

§ 1155.2 Definitions.

(a) Unless otherwise provided in the text of these regulations, the following definitions apply in this part:

(1) *Commercial and retail waste* means material discarded by stores, offices, restaurants, warehouses, nonmanufacturing activities at industrial facilities, and other similar establishments or facilities.

(2) *Construction and demolition debris* means waste building materials, packaging, and rubble resulting from construction, remodeling, repair, and demolition operations on pavements, houses, commercial buildings, and other structures.

(3) *Household waste* means material discarded by residential dwellings, hotels, motels, and other similar permanent or temporary housing establishments or facilities.

(4) *Industrial waste* means the solid waste generated by manufacturing and industrial and research and development processes and operations, including contaminated soil, nonhazardous oil spill cleanup waste and dry nonhazardous pesticides and chemical waste, but does not include hazardous waste regulated under subtitle C of the Solid Waste Disposal Act (42 U.S.C. 6921 et seq.), mining or oil and gas waste.

(5) *Institutional waste* means material discarded by schools, nonmedical waste discarded by hospitals, material discarded by nonmanufacturing activities at prisons and government facilities, and material discarded by other similar establishments or facilities.

(6) *Municipal solid waste* means household waste; commercial and retail waste; and institutional waste.

(7) With the exception of waste generated by a rail carrier during track, track structure, or right-of-way construction, maintenance, or repair (including railroad ties and line-side poles) or waste generated as a result of a railroad accident, incident, or derailment, the term *solid waste* means construction and demolition debris; municipal solid waste; household waste; commercial and retail waste; institutional waste; sludge; industrial waste; and other solid waste, as determined appropriate by the Board.

(8) *Solid waste rail transfer facility*—(i) Means the portion of a facility owned or operated by or on behalf of a rail carrier (as defined in 49 U.S.C. 10102) where solid waste, as a commodity to be transported for a charge, is collected, stored, separated, processed, treated, managed, disposed of, or transferred, when the activity takes place outside of original shipping containers; but (ii) Does not include—

(A) The portion of a facility to the extent that activities taking place at such portion are comprised solely of the railroad transportation of solid waste after the solid waste is loaded for shipment on or in a rail car, including railroad transportation for the purpose

of interchanging railroad cars containing solid waste shipments; or

(B) A facility where solid waste is transferred or transloaded solely from a tank truck directly to a rail tank car.

(9) *Sludge* means any solid, semi-solid or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility exclusive of the treated effluent from a wastewater treatment plant.

(b) *Exceptions.* Notwithstanding paragraph (a) of this section, the terms *household waste*, *commercial and retail waste*, and *institutional waste* do not include yard waste and refuse-derived fuel; used oil; wood pallets; clean wood; medical or infectious waste; or motor vehicles (including motor vehicle parts or vehicle fluff).

(c) “*Land-use-exemption permit*” means the authorization issued by the Board pursuant to the authority of 49 U.S.C. 10909(a) and includes the term “siting permit” in 49 U.S.C. 10909(e).

(d) “*State laws, regulations, orders, or other requirements affecting the siting of a facility*,” as used in 49 U.S.C. 10909(f) and 49 CFR 1155.27(d), include the requirements of a state or a political subdivision of a state, including a locality or municipality, affecting the siting of a facility.

(e) “*State requirements*” as used in 49 U.S.C. 10908 does not include the laws, regulations, ordinances, orders, or other requirements of a political subdivision of a state, including a locality or municipality, unless a state expressly delegates such authority to such political subdivision.

Subpart B—Procedures Governing Petitions To Require a Facility in Existence on October 16, 2008, To Apply for a Land-Use-Exemption Permit

§ 1155.10 Contents of petition.

A petition to require a solid waste rail transfer facility in existence on October 16, 2008, to apply for a land-use-exemption permit, submitted by

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the Governor of the state or that Governor's designee, shall contain the following information and shall be attested to by a person having personal knowledge of the matters contained therein:

- (a) The Governor's name.
- (b) The state's name and the name of any agency filing on behalf of the Governor.
- (c) The full address of the solid waste rail transfer facility, or, if not available, the city, state, and United States Postal Service ZIP code.
- (d) The name of the rail carrier that owns or operates the facility.
- (e) A good-faith certification that the facility qualifies as a solid waste rail transfer facility pursuant to the definition in 49 U.S.C. 10908(e)(1)(H) and 49 CFR 1155.2 both as of the filing date of the petition and on October 16, 2008.
- (f) Relief sought (that the rail carrier that owns or operates the facility be required to apply for a land-use-exemption permit).
- (g) Name, title, and address of representative of petitioner to whom correspondence should be sent.

§ 1155.11 Filing and service of petition.

(a) When the petition is filed with the Board, the petitioner shall serve, by first class mail, a copy of the petition on the rail carrier that owns or operates the solid waste rail transfer facility and on the facility if the address is different than the rail carrier's address. A copy of the certificate of service shall be filed with the Board at the same time.

(b) Upon the filing of a petition, the Board will review the petition and determine whether it conforms to all applicable regulations. If the petition is substantially incomplete or its filing otherwise defective, the Board will reject the petition for stated reasons by order (which order will be administratively final) within 15 days from the date of filing of the petition.

§ 1155.12 Participation in petition proceedings.

(a) An interested person may file a reply to the petition challenging the Governor's classification of the facility as a solid waste rail transfer facility and may offer evidence to support its

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contention. The petitioner will have an opportunity to file a rebuttal.

(b) Filing and service of replies.

(1) Any reply shall be filed with the Board (the Secretary, Surface Transportation Board, 395 E Street, SW., Washington, DC 20423) within 20 days of the filing with the Board of a petition to require a solid waste rail transfer facility in existence on October 16, 2008, to apply for a land-use-exemption permit.

(2) A copy of the reply shall be served on petitioner or its representative at the time of filing with the Board. Each filing shall contain a certificate of service.

(3) Any rebuttal to a reply shall be filed and served by petitioner no later than 30 days after the filing of the petition.

§ 1155.13 Board determination with respect to a Governor's petition.

(a) The following schedule shall govern the process for Board consideration of and decisions regarding a petition to require a solid waste rail transfer facility in existence on October 16, 2008, to apply for a land-use-exemption permit, from the time the petition is filed until the time of the Board's decision on the merits:

Day 0—Petition filed.

Day 20—Due date for reply.

Day 30—Due date for response to reply.

(b) The Board shall accept the Governor's complete petition on a finding that the facility qualifies as a solid waste rail transfer facility pursuant to the definition in 49 U.S.C. 10908(e)(1)(H) and 49 CFR 1155.2 both on the filing date of the petition and on October 16, 2008. In the decision accepting the Governor's petition, the Board shall require that the rail carrier that owns or operates the facility file a land-use-exemption-permit application within 120 days of the service date of the decision.

Subpart C—Procedures Governing Applications for a Land-Use-Exemption Permit

§ 1155.20 Notice of intent to apply for a land-use-exemption permit.

(a) *Filing and publication requirements.* An applicant (*i.e.*, a solid waste rail

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transfer facility, or the rail carrier that owns or operates the facility) shall give Notice of Intent to file a land-use-exemption permit application by complying with the following procedures:

(1) *Filing.* Applicant must serve its Notice of Intent on the Board in the format prescribed in 49 CFR 1155.21. The Notice of Intent shall be filed in accordance with the time requirements of paragraph (b) of this section.

(2) *Service.* Applicant must serve, by first-class mail (unless otherwise specified), its Notice of Intent upon:

(i) The Governor of the state where the facility is located;

(ii) The state agency/ies and/or municipal agency/ies that would have permitting or review authority over the solid waste rail transfer facility absent 49 U.S.C. 10908 and 10909, these regulations, and federal preemption under 49 U.S.C. 10501(b); and

(iii) The appropriate managing government agencies responsible for the groups of land listed in 49 U.S.C. 10909(c)(2).

(3) *Newspaper publication.* Applicant must publish its Notice of Intent at least once during each of 3 consecutive weeks in a newspaper of general circulation in each county in which any part of the proposed or existing facility is located.

(b) *Time limits.* (1) The Notice of Intent must be served on the parties discussed above at least 15 days, but not more than 30 days, prior to the filing of the land-use-exemption permit application;

(2) The three required newspaper Notices must be published within the 30-day period prior to the filing of the application; and

(3) The Notice of Intent must be filed with the Board either concurrently with service on the required parties or when the Notice is first published (whichever occurs first).

(c) *Environmental and Historic Reports.* Applicant for a solid waste rail transfer facility, other than those in existence on October 16, 2008, must also submit an Environmental Report containing the information described at 49 CFR 1105.7 at least 20 days prior to filing an application. Applicants shall concurrently file an historic report con-

taining the information at 49 CFR 1105.8 if that regulation is applicable. The environmental and historic reporting requirements that would otherwise apply are waived, however, if the applicant hires a third-party consultant, the Board's Section of Environmental Analysis (SEA) approves the scope of the consultant's work, and the consultant works under SEA's supervision to prepare any environmental documentation that might be warranted. In such a case, the consultant acts on behalf of the Board, working under SEA's direction to collect the needed environmental information and compile it into a draft of the appropriate environmental documentation (an Environmental Impact Statement or a more limited Environmental Assessment). See 49 CFR 1105.10(d).

§ 1155.21 Form of notice.

The Notice of Intent to petition for a land-use-exemption permit shall be in the following form:

STB Finance Docket No. ____ (Sub-No. ____)

Notice of Intent to petition for a land-use-exemption permit for a solid waste rail transfer facility.

(Name of Applicant) gives notice that on or about (insert date application will be filed with the Board) it intends to file with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423, an application for a land-use-exemption permit for a solid waste rail transfer facility as defined in 49 U.S.C. 10908(e)(1)(H) and 49 CFR 1155.2. The solid waste rail transfer facility is located at (full address, or, if not available, provide city, state, and United States Postal Service ZIP code). The solid waste rail transfer facility is located on a line of railroad known as ____ at milepost ____ between (station name) at milepost ____ and (station name) at milepost ____.

The reason(s) for the proposed permit application is (are) ____ (explain briefly and clearly the activities undertaken, or proposed to be undertaken, by the applicant at the solid waste rail transfer facility. Also describe the specific state and local laws, regulations, orders or other requirements affecting siting from which the applicant requests entire or partial exemption that would otherwise apply and any action that the state, local, or municipal authority has taken affecting the siting of the facility.)

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(Include this paragraph for facilities not in existence on October 16, 2008). Applicant certifies that, based on information in its possession, the facility is not proposed to be located on land within any unit of or land affiliated with the National Park System, the National Wildlife Refuge System, the National Wilderness Preservation System, the National Trails System, the National Wild and Scenic Rivers System, a National Reserve, or a National Monument. Applicant further certifies that the facility is not proposed to be located on lands referenced in The Highlands Conservation Act, Public Law No. 108-421, for which a state has implemented a conservation management plan (or, The facility is consistent with the restrictions implemented by (state) under The Highlands Conservation Act, Pub. L. No. 108-421, placed at its proposed location). Any relevant documentation in the railroad's possession on these issues will be made available promptly to those requesting it.

(For facilities already in existence on October 16, 2008, address the extent to which the facility is or is not located in any of these types of lands, and to the extent that it is so located address any relevant criteria, and so certify.)

The application containing the information set forth at 49 CFR 1155.22 will include the applicant's entire case for the granting of the land-use-exemption permit (case in chief). Any interested person, after the application is filed on (insert date), may file with the Surface Transportation Board written comments concerning the application within 45 days after the application is filed.

Comments should contain that party's entire case in support or opposition including the following, as appropriate:

(1) Name, address, and organizational affiliation.

(2) A statement describing commenter's interest in the proceeding, including information concerning the organization or public interest the commenter represents.

(3) Specific reasons why commenter supports or opposes the application, taking into account the standards for the Board's review and consideration provided in 49 U.S.C. 10909(c), (d) and these regulations.

(4) If the applicant files under 49 CFR 1155.23, specific reasons why commenter supports or opposes the Board's accepting the application.

(5) Any rebuttal of material submitted by applicant.

Written comments will be considered by the Board in determining what disposition to make of the application. Parties seeking information concerning the filing of comments should refer to 49 CFR 1155.25.

Written comments should indicate the proceeding designation STB Finance Docket No. ____ (Sub-No. ____) and must be filed with the Secretary, Surface Transportation

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Board, 395 E Street, SW., Washington, DC 20423, no later than (insert the date 45 days after the date applicant intends to file its application). A copy of each written comment shall be served upon the representative of the applicant (insert name, address, and phone number). Except as otherwise set forth in 49 CFR 1155, each document filed with the Board must be served on all parties to the land-use-exemption-permit proceeding. 49 CFR 1104.12(a).

Persons seeking further information concerning land-use-exemption-permit procedures may contact the Surface Transportation Board or refer to 49 U.S.C. 10908, 10909, and the full land-use-exemption-permit regulations at 49 CFR 1155.

A copy of the application will be available for public inspection on or after (insert date the land-use-exemption-permit application is to be filed with Board). The applicant shall furnish a copy of the application to any interested person proposing to file a comment, upon request.

Questions concerning potential environmental issues may be directed to the Board's Section of Environmental Analysis. Where the preparation of environmental documentation under the National Environmental Policy Act is warranted, a Draft Environmental Impact Statement (EIS) (or more limited Environmental Assessment (EA), if appropriate) prepared by the Section of Environmental Analysis will be issued for public review and comment and served upon all parties of record and upon any agencies or other persons who commented during its preparation. The comments received will be addressed in the Final EIS or Post EA. The Board will take into account the results of the environmental review and any final recommended environmental mitigation in deciding what action to take on the application.

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Applications for land-use-exemption permits shall contain the following information, including supporting documentation:

(a) *General.* (1) Exact name of applicant.

(2) Whether applicant is a common carrier by railroad subject to 49 U.S.C. Subtitle IV, chapter 105.

(3) Summary of why a land-use-exemption permit is being sought.

(4) The full address of the solid waste rail transfer facility, or, if not available, the city, state, and United States Postal Service ZIP code.

(5) The line of railroad serving the facility, the milepost location of the facility, and the milepost and names of

the stations that the facility is located between.

(6) Name, title, and address of representative of applicant to whom comments should be sent.

(7) Citation to all state, local, or municipal laws, regulations, orders, or other requirements affecting the siting of the solid waste rail transfer facility.

(8) Copies of the specific state, local, or municipal laws, regulations, orders, or other requirements affecting the siting of the solid waste rail transfer facility from which the applicant requests entire or partial exemption that would otherwise apply, any publicly available material providing the criteria in the application of the regulations, and a description of any action that the state, local, or municipal authority has taken affecting the siting of the facility.

(9) Certification that the laws, regulations, orders or other requirements from which the applicant requests exemption are not based on Federal laws, regulations, orders, or other requirements.

(10) Certification that the facility complies with all state, local, or municipal laws, regulations, orders, or other requirements affecting the siting of the facility except those for which it seeks exemption.

(11) Citation to the regulations listed in 49 CFR 1155.27(c)(1) through (5).

(12) Certification that the applicant has applied or will apply for the appropriate state permits not affecting siting.

(13) For facilities not in existence as of October 16, 2008, certification that the facility is not proposed to be located on land within any unit of or land affiliated with the National Park System, the National Wildlife Refuge System, the National Wilderness Preservation System, the National Trails System, the National Wild and Scenic Rivers System, a National Reserve, or a National Monument. For facilities in existence as of October 16, 2008, state whether the facility is located in any of these types of lands.

(14) For facilities not in existence as of October 16, 2008, certification that the facility is not proposed to be located on lands referenced in The Highlands Conservation Act, Public Law

No. 108-421, for which a state has implemented a conservation management plan, or, that the facility is consistent with the restrictions implemented by the applicable state under The Highlands Conservation Act, Public Law No. 108-421, placed on its proposed location. For facilities in existence as of October 16, 2008, state whether the facility is located in any of these lands, and, if so, address whether the facility is consistent with the restrictions placed on the location by the applicable state under that law.

(15) A detailed description of the operations and activities that will occur/are occurring at the facility.

(16) Detailed map showing the subject facility on a sheet not larger than 8 x 10½ inches, drawn to scale, and with the scale shown thereon. The map must show, in clear relief, the exact location of the facility on the rail line and its relation to other rail lines in the area, highways, water routes, population centers and any geographic features that should be considered in determining whether the facility would pose an unreasonable risk to public health, safety, or the environment, pursuant to 49 U.S.C. 10909(c)(1).

(17) Detailed drawing of the subject facility on a sheet not larger than 8 x 10½ inches, drawn to scale, and with the scale shown thereon. The drawing must show, in clear relief, the exact boundaries of the facility, structures at the facility, the location and type of the operations taking place at the facility, the proposed traffic configuration for the solid waste entering and leaving the facility, reasonable future expansion that the applicant requests to be included in the land-use-exemption permit, any geographic features that should be considered in determining whether the facility would pose an unreasonable risk to public health, safety, or the environment, pursuant to 49 U.S.C. 10909(c)(1), and any other information that the applicant would like to show.

(b) *A statement that sets forth in detail the reasons why the Board should grant a land-use-exemption permit to the applicant.* The applicant shall organize its request in terms of the standards for the Board's review and consideration

provided in 49 U.S.C. 10909(c), (d) and these regulations.

(c) *Environmental impact.* The applicant shall certify that it has submitted an environmental and/or historical report containing the information in 49 CFR 1105.7 and 1105.8, if one is required, to allow the Board's Section of Environmental Analysis to determine whether preparation of environmental documentation is warranted, and, if so, whether a full Environmental Impact Statement or a more limited Environmental Assessment should be prepared.

(d) *Additional information.* The applicant shall submit such additional information to support its application as the Board may require.

(e) *Draft FEDERAL REGISTER Notice.* The applicant shall submit a draft notice of its application to be published by the Board. In addition to the regular number of copies that must be filed with the Board, the applicant must submit a copy of the draft notice as data contained on a computer diskette compatible with the Board's current word processing capabilities. The Board will publish the notice in the FEDERAL REGISTER within 20 days of the application's filing with the Board. The draft notice shall be in the following form:

STB Finance Docket No. ____ (Sub-No. ____)

Notice of Application for a land-use-exemption permit for a solid waste rail transfer facility.

On (insert date application was filed with the Board) (name of applicant) filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423, an application for a land-use-exemption permit for a solid waste rail transfer facility. The solid waste rail transfer station is located at (full address, or, if not available, provide city, state, and United States Postal Service ZIP code). The solid waste rail transfer facility is located on a line of railroad known as ____ at milepost ____ between (station name) at milepost ____ and (station name) at milepost ____ . The application explains why applicant believes its request for a land-use-exemption permit should be granted.

(Include this paragraph for facilities not in existence on October 16, 2008). The facility is not proposed to be located on land within any unit of or land affiliated with the National Park System, the National Wildlife Refuge System, the National Wilderness Preservation System, the National Trails System, the National Wild and Scenic Rivers System, a National Reserve, or a National

Monument. The facility is not proposed to be located on lands referenced in The Highlands Conservation Act, Public Law No. 108-421, for which a state has implemented a conservation management plan (or, The facility is consistent with the restrictions implemented by (state) under The Highlands Conservation Act, Pub. L. No. 108-421, placed on its proposed location). Any relevant documentation in the railroad's possession will be made available promptly to those requesting it.

(For facilities already in existence on October 16, 2008, address the extent to which the facility is or is not located in any of these types of lands, and to the extent that it is so located address any relevant criteria, and so certify.)

Any interested person may file with the Surface Transportation Board written comments concerning the application within 45 days of the filing of the application. Persons seeking information concerning the filing of comments should refer to 49 CFR 1155.25.

Written comments should indicate the proceeding designation STB Finance Docket No. ____ (Sub-No. ____) and must be filed with the Secretary, Surface Transportation Board, 395 E Street, SW., Washington, DC 20423, no later than (insert the date 45 days after the date applicant intends to file its application). A copy of each written comment shall be served upon the representative of the applicant (insert name, address, and phone number). Except as otherwise set forth in 49 CFR 1155, each document filed with the Board must be served on all parties to the land-use-exemption permit proceeding. 49 CFR 1104.12(a).

Persons seeking further information concerning land-use-exemption-permit procedures may contact the Surface Transportation Board or refer to 49 U.S.C. 10908, 10909, and the full land-use-exemption-permit regulations at 49 CFR 1155.

A copy of the application is available for public inspection. The applicant shall furnish a copy of the application to any interested person proposing to file a comment, upon request.

Questions concerning potential environmental issues may be directed to the Board's Section of Environmental Analysis. Where the preparation of environmental documentation under the National Environmental Policy Act is warranted, a Draft Environmental Impact Statement (EIS) (or more limited Environmental Assessment (EA), if appropriate) prepared by the Section of Environmental Analysis will be issued for public review and comment and served upon all parties of record and upon any agencies or other persons who commented during its preparation. The comments received will be addressed in the Final EIS or Post EA. The Board will take into account the results of

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the environmental review and any final recommended environmental mitigation in deciding what action to take on the application.

(f) *Verification.* The original application shall be executed and verified in the form set forth below by an officer of the applicant having knowledge of the facts and matters relied upon.

Verification
State of ____ ss.
County of ____

____ (Name of affiant) makes oath and says that (s)he is the ____ (title of affiant) of the ____ (name of applicant) applicant herein; that (s)he has been authorized by the applicant (or as appropriate, a court) to verify and file with the Surface Transportation Board the foregoing application in STB Finance Docket No. ____ (Sub-No. ____); that (s)he has carefully examined all of the statements in the application as well as the exhibits attached thereto and made a part thereof; that (s)he has knowledge of the facts and matters relied upon in the application; and that all representations set forth therein are true and correct to the best of his/her knowledge, information, and belief.

(Signature)

Subscribed and sworn to before me ____ in and for the State and County above named, this ____ day of ____, 20 ____.

My commission expires ____.

§ 1155.23 Additional requirements when filing after an unsatisfactory result from a State, local, or municipal authority affecting the siting of the facility.

(a) When an applicant has previously sought permission from the applicable state, local, or municipal authority and received an unsatisfactory result, such as inordinate delay, affecting the siting of the facility, the applicant may petition the Board to accept an application for a land-use-exemption permit. The applicant shall address in its petition why applicant believes it can make the showing required in 49 CFR 1155.23(b). The petition shall be filed simultaneously with the land-use-exemption permit application.

(b) Standard for review. The Board will not consider a land-use-exemption-permit application regarding laws, regulations, or other requirements upon which the applicant has received an unsatisfactory result from a state, local, or municipal authority, unless the Board finds that the laws, regulations, or other requirements affect the siting

of the facility, on their face or as applied, either

(1) Unreasonably burden the interstate transportation of solid waste by railroad, or

(2) Discriminate against the railroad transportation of solid waste and a solid waste rail transfer facility.

§ 1155.24 Filings and service of application.

(a) The applicant shall tender with its application an affidavit attesting to its compliance with the notice requirements of 49 CFR 1155.20. The affidavit shall include the dates of service, posting, and newspaper publication of the Notice of Intent.

(b) When the application is filed with the Board, the applicant shall serve, by first-class mail, a copy on the Governor of the state where the facility is located, and the state, local, and/or municipal agency/ies that would have permitting or review authority of the solid waste rail transfer facility if there were no federal preemption. A copy of the certificate of service shall be filed with the Board at the same time.

(c) The applicant shall promptly furnish by first class mail a copy of the application to any interested person proposing to file a written comment upon request. A copy of the certificate of service shall be filed with the Board at the same time.

(d)(1) Upon the filing of a land-use-exemption-permit application, the Board will review the application and determine whether it conforms to all applicable regulations. If the application is substantially incomplete or its filing otherwise defective, the Board shall reject the application for stated reasons by order (which order will be administratively final) within 20 days from the date of filing of the application. If the Board does not reject the application, notice of the filing of the application shall be published in the FEDERAL REGISTER by the Board, through the Director of the Office of Proceedings, within 20 days of the filing of the application.

(2) An applicant may seek waiver of specific regulations listed in subpart C of this part by filing a petition for waiver with the Board. A decision by

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the Director of the Office of Proceedings granting or denying a waiver petition will be issued within 30 days of the date the petition is filed. Appeals from the Director's decision will be decided by the entire Board. If waiver is not obtained prior to the filing of the application, the application may be subject to rejection.

§ 1155.25 Participation in application proceedings.

(a) *Public participation.* (1) *Comments.* Interested persons may become parties to a land-use-exemption-permit proceeding by filing written comments with the Board within 45 days of the filing of the application. Comments should contain the following information, as appropriate:

(i) Name, address, and organizational affiliation.

(ii) A statement describing commenter's interest in the proceeding, including information concerning any organization or public interest it represents; and

(iii) Specific reasons why commenter supports or opposes the application, taking into account the standards for the Board's review and consideration set forth in 49 U.S.C. 10909(c), (d) and 49 CFR part 1155.

(iv) If the applicant files under 49 CFR 1155.23, specific reasons why the commenter supports or opposes the Board considering the application.

(v) Any rebuttal to the evidence and argument submitted by applicant.

(vi) Any State, local, or municipal law, regulation, order, or other requirement affecting the siting of the facility not included in the application and any argument concerning its bearing on the merits of the application in terms of the standards for the Board's review and consideration set forth in 49 U.S.C. 10909(c), (d) and 49 CFR part 1155.

(b) *Filing and service of written comments, along with evidence and argument, and rebuttals.* (1) Written comments shall be filed with the Board (addressed to the Secretary, Surface Transportation Board, 395 E Street, SW., Washington, DC 20423) within 45 days of the filing with the Board of a land-use-exemption permit application. An original and 10 copies of each written comment shall be filed with the Board. A

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copy of each written comment shall be served on applicant or its representative at the time of filing with the Board. Each filing shall contain a certificate of service.

(2) Rebuttals to written comments shall be filed and served by applicants no later than 60 days after the filing of the application. An original and 10 copies of such replies shall be filed with the Board.

§ 1155.26 Transfer and termination of a land-use-exemption permit.

(a) A land-use-exemption permit will be transferred to an acquiring rail carrier without the need for a new application for a land-use-exemption permit if the rail line associated with the solid waste rail transfer facility is transferred to another rail carrier or to an entity formed to become a rail carrier pursuant to authority granted by the Board under 49 U.S.C. 10901, 10902, or 11323. When seeking Board authority under 49 U.S.C. 10901, 10902, or 11323, the applicant(s) should specifically advise the Board of the intended transfer.

(b) When a carrier plans to cease using a facility as a solid waste rail transfer facility, or when a facility is transferred to any party in any manner other than that described in 49 CFR 1155.26(a), the entity that received the land-use-exemption permit must notify the Board in writing no later than 60 days prior to the proposed cessation or transfer. Upon receipt of that notice, the Board will publish notice in the FEDERAL REGISTER that the land-use-exemption permit will be terminated on the 60th day unless otherwise ordered by the Board.

§ 1155.27 Board determinations under 49 U.S.C. 10909.

(a) *Procedural schedule.* (1) The following schedule shall govern the process for Board consideration and decisions in land-use-exemption permit application proceedings from the time the application is filed until the time of the Board's decision on the merits:

Day 0—Application filed, including applicant's case in chief.

Day 20—Due date for Notice of Application to be published in the FEDERAL REGISTER.

Day 45—Due date for comments.

Day 60—Due date for applicant's rebuttal.

(2) A decision on the merits will be due 90 days after a full record is developed, including the appropriate environmental review, if any.

(b) *Standard for review.* (1) The Board will issue a land-use-exemption permit only if it determines that the facility at the existing or proposed location would not pose an unreasonable risk to public health, safety, or the environment. In deciding whether a solid waste rail transfer facility that is or proposed to be constructed or operated by or on behalf of a rail carrier poses an unreasonable risk to public health, safety, or the environment, the Board shall weigh the particular facility's potential benefits to and the adverse impacts on public health, public safety, the environment, interstate commerce, and transportation of solid waste by rail.

(2) The Board will not grant a land-use-exemption permit for a solid waste rail transfer facility proposed to be located on land within any unit of or land affiliated with the National Park System, the National Wildlife Refuge System, the National Wilderness Preservation System, the National Trails System, the National Wild and Scenic Rivers System, a National Reserve, or a National Monument.

(3) The Board will not grant a land-use-exemption permit for a solid waste rail transfer facility proposed to be located on land within any unit of or land affiliated with lands referenced in The Highlands Conservation Act, Public Law No. 108-421, for which a state has implemented a conservation management plan, if operation of the facility would be inconsistent with restrictions placed on such land.

(4) A land-use-exemption permit will not exempt a state requirement that a rail carrier comply with an environmental, public health, or public safety standard that falls under the traditional police powers of the state unless the requirement is unreasonably burdensome to interstate commerce or discriminates against rail carriers.

(5) A land-use-exemption permit will only exempt state, local, or municipal laws, regulations, orders, or other requirements affecting the siting of the solid waste rail transfer facility.

(c) *Considerations.* The Board will consider and give due weight to the following, as applicable:

(1) The land-use, zoning, and siting regulations or solid waste planning requirements of the state or state subdivision in which the facility is or will be located that are applicable to solid waste transfer facilities, including those that are not owned or operated by or on behalf of a rail carrier;

(2) The land-use, zoning, and siting regulations or solid waste planning requirements applicable to the property where the solid waste rail transfer facility is proposed to be located;

(3) Regional transportation planning requirements developed pursuant to Federal and state law;

(4) Regional solid waste disposal plans developed pursuant to Federal or state law;

(5) Any Federal and State environmental protection laws or regulations applicable to the site;

(6) Any unreasonable burdens imposed on the interstate transportation of solid waste by railroad, or the potential for discrimination against the railroad transportation of solid waste, a solid waste rail transfer facility, or a rail carrier that owns or operates such a facility; and

(7) Any other relevant factors, as determined by the Board.

(d) If the Board grants a land-use-exemption permit to a solid waste rail transfer facility, all State laws, regulations, orders, or other requirements affecting the siting of a facility are preempted with regard to that facility. A Board issued land-use-exemption permit may require compliance with such State laws, regulations, orders, or other requirements.

§ 1155.28 Appellate procedures.

General rule. Petitions to modify, amend, or revoke land-use-exemption permits shall be decided in accordance with the Board's normal standard of review for petitions to reopen administratively final Board actions at 49 CFR 1155.4. The petition must demonstrate material error, new evidence, or substantially changed circumstances that warrant the requested action, and is subject to these additional conditions:

(a) An entity that petitions for a modification or amendment requesting an expansion of federal preemption or the facility's operations or physical size is subject to the notice and application requirements in this subpart C. The language of the notifications shall be modified to note that the petition is for a modification or amendment.

(b) The Board will approve or deny petitions to modify, amend, or revoke a land-use-exemption permit within 90 days after the full record for the petition is developed.

PARTS 1156–1176 [RESERVED]

Parts 1177–1199—Finance Procedures

Parts 1177–1179—Securities, Security Interests and Financial Structures

PART 1177—RECORDATION OF DOCUMENTS

Sec.

1177.1 Definitions and classifications of documents.

1177.2 To whom documents should be submitted for recordation.

1177.3 Requirements for submission.

1177.4 Sample forms.

1177.5 Administrative procedure.

AUTHORITY: 49 U.S.C. 721, 11301.

SOURCE: 46 FR 54946, Nov. 5, 1981, unless otherwise noted. Redesignated at 47 FR 49592, Nov. 1, 1982.

§ 1177.1 Definitions and classifications of documents.

(a) A “primary document” is a mortgage (excluding those under the Ship Mortgage Act of 1920, as amended—46 U.S.C. et seq.), lease, equipment trust agreement, conditional sales agreement, assignment of a lease or leases which have not previously been filed, or other instrument evidencing the mortgage, lease, conditional sale, or bailment of one or more vessels operated subject to Surface Transportation Board jurisdiction, railroad cars, locomotives, or other rolling stock for a use related to interstate commerce.

(b) A “secondary document” is any assignment of rights or interest, sup-

plement, or amendment to any primary or other secondary document. These include releases, discharges, or satisfactions, either total or partial.

§ 1177.2 To whom documents should be submitted for recordation.

Documents to be recorded shall be submitted in person, via the Board's website, or by mail addressed to the Chief, Section of Administration, Office of Proceedings, Surface Transportation Board, Washington, DC 20423–0001. All documents submitted by mail should clearly state “Documents for Recordation” on the envelope.

[74 FR 52910, Oct. 15, 2009]

§ 1177.3 Requirements for submission.

In order to be accepted for recordation, an original of any primary or secondary document must:

(a) Be in writing and executed by the parties to the document, and acknowledged or verified either in a form:

(1) Authorized by the law of the state, territory, district or possession where executed for the acknowledgment or verification of deeds of land; or

(2) Substantially as follows:

INDIVIDUAL FORM OF ACKNOWLEDGEMENT

I, (name of signor), certify that I am the person described in and who executed the foregoing instrument and that I acknowledge that I executed the same as my free act and deed. I further declare (certify, verify or state) under penalty of perjury (“under the laws of the United States of America” if executed outside the United States) that the foregoing is true and correct. Executed on (date).

Signature.

OR:

CORPORATE FORM OF ACKNOWLEDGEMENT

I, (name of signor), certify that I am (title of office) of (name of corporation), that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that the instrument was signed and sealed on behalf of the corporation by authority of its Board of Directors, and that I acknowledge that the execution of the foregoing instrument was the free act and deed of the corporation. I further declare (certify, verify or state) under penalty of perjury (“under the laws of the United States of America” if executed outside the United States of America) that the foregoing is true and correct. Executed on (date).